

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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**IN RE: BAIR HUGGER FORCED AIR  
WARMING DEVICE PRODUCTS  
LIABILITY LITIGATION**

**MDL No. 15-md-02666 (JNE/FLN)**

**This Document Relates to:  
Edward Brannon, 0:16-cv-02750-JNE-FLN**

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**MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS  
FOR FAILURE TO COMPLY WITH PRETRIAL ORDER NO. 14**

Plaintiff, Edward Brannon (hereinafter "Mr. Brannon") submits this Memorandum in Opposition to Defendants' Motion to Dismiss.

**INTRODUCTION**

3M Company and Arizant Healthcare, Inc. ("defendants") ask this Court to dismiss Mr. Brannon's case, with prejudice, because as of August 3, 2017 no Plaintiff Fact Sheet ("PFS") had been served pursuant to Pretrial Order No. 14 ("PTO 14"). However, counsel asserts that this is not the case and that the PFS with corresponding deficiencies were cured prior to defendants' Motion to Dismiss.

**FACTS**

Counsel filed Mr. Brannon's complaint on August 15, 2016. On October 1, 2016, Mr. Brannon was sent the PFS for his review and completion. Counsel submitted a partially completed PFS on December 22, 2016. On January 20, 2017, the defendants issued a deficiency on his PFS. After responding to the deficiency, counsel submitted a completed PFS via Elijah on

March 13, 2017 (**Exhibit A**). Another deficiency was issued on March 8, 2017 and responded to on March 28, 2017 with the following response (**Exhibit B**):

“Plaintiff Fact Sheet was submitted on the Elijah portal on 3/13/2017 to cure deficiency”

On April 10, 2017, the defendant issued another deficiency on the original PFS. Counsel responded in the same manner as before. (**Exhibit C**).

Since the Court’s instructions in June 2017 regarding re-verification requiring the client to sign off on deficiency issues, Mr. Brannon signed his re-verification declaration page agreeing to the already submitted information. (**Exhibit D**) The re-verification page was submitted to the defendants on June 28, 2017.

### **ARGUMENT**

Mr. Brannon submitted his PFS and cured his deficiency in a timely manner. Additionally, he submitted his re-verification page, which in this instance, should not have been required for him to do so. Therefore, the plaintiff respectfully requests this Honorable Court deny the defendants’ Motion to Dismiss Mr. Brannon’s case with prejudice.

Dated: August 16, 2017

Respectfully submitted,

**LEVIN, PAPANTONIO, THOMAS, MITCHELL,  
RAFFERTY & PROCTOR, P.A.**

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